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LITTLE GIRL LOST: LAS VEGAS METRO POLICE VICE DIVISION AND THE USE OF MATERIAL WITNESS HOLDS AGAINST TEENAGED PROSTITUTES

Geneva O. Brown*

This article explores the Las Vegas Metro Police Vice Division routine use of material witness holds to detain young prostitutes. The Juvenile court places the girls on material witness holds seeking their cooperation in the prosecution of their traffickers and pimps. The girls languish in detention awaiting the outcome of the adult cases in which they are the central or only witness. The use of material witness holds is reviewed through the historical perspective of government response to prostitution and the history of material witness holds. The article then argues that the detention of the girls, sometimes without charges, is a form of secondary victimization. Many of the girls are from abusive homes and the system that is meant to protect them further victimizes them. The article surmises that the use of United Nations drafted protocols in dealing with trafficked women and children is a more humane approach. The women and children are not seen as persons who aided and abetted in their sexual exploitation but are seen as victims of human rights violations. The article concludes that the Las Vegas Metro should observe the international standards set forth by the United Nations and recognize a new paradigm in dealing with sex trafficking and sexual exploitation cases.

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INTRODUCTION

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Hope was a seventeen year old runaway. Las Vegas Metro Police arrested her after she violated curfew and gaming rules by being a minor in a casino at 4:00 a.m. The officers arrested Hope believing she was in the company of her pimp. Hope dressed in a very provocative style. The goal of arresting a teenaged girl sitting in a bar was not just to give her a solicitation record but to prosecute her pimp. Hope assumed that she would be detained and released after her initial appearance. Hope was wrong.

The Las Vegas Metro Police Vice Division routinely detains young prostitutes.¹ The charges range from minor in a gambling establishment to solicitation. District attorneys request ‘courtesy holds’² for the girls. The courtesy holds detain the girls no matter what the state of their pending charges. The district attorney explains to the court that the courtesy hold is used to protect the young woman from being released into the arms of her pimp.³ However, the material witness hold gives the Las Vegas Metro access to a potential witness no matter what the state of her case.⁴

Hope remained in juvenile detention wondering why she could not be released to a family member. The district attorney argued that if she were released, her pimp would influence her not to cooperate or remove her from the jurisdiction. The Las Vegas Metro expected cooperation for the prosecution in adult court while Hope remained in the juvenile detention facility. The stance of Las Vegas Metro in detaining young girls hoping that they will cooperate countermands the argument that detaining the girls protects them. If the pimps are as dangerous and violent as Metro claims, they place the girls in danger by requesting their cooperation in statements and potential testimony. Where can a teenaged girl hide when she is a runaway and a potential juvenile delinquent?

¹ See *infra* note 146 and accompanying text detailing the Las Vegas Metro Police instituted the Operation STOP program.

² Courtesy holds are the nomenclature of the Las Vegas Metro Police Department for Material Witness holds.

³ See *infra* notes 149-151 and accompanying text.

⁴ The material witness hold is not dependent upon pending charges for the detainee.

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The profile of most girls like Hope includes a home where physical and sexual abuses are common.⁵ Young girls find escape from such homes only to be used by men who readily seek to exploit youth and vulnerability. Las Vegas Metro further exploits them by seeking to gain their knowledge of the local sex industry.

The girls on material witness holds suffer secondary victimization.⁶ The criminal justice system places them in extremely caustic position of testifying against their former boyfriend/lover/caretaker/abuser. It is well documented that pimps use physical and sexual intimidation to gain cooperation of their victims.⁷ Requiring cooperation and testimony that result in the girls facing their pimps in court compounds their fear. The cooperation does not guarantee that the girl will not be prosecuted. Seeking to prosecute pimps in the sex industry, the approach used by the Las Vegas Metro Vice unit exploits and re-victimizes girls. The exploitation and victimization is a violation of their basic human rights.

The United Nations Commission on Human Rights Special Rapporteur wrote a report detailing the world wide problem of trafficking of women and children for sexual exploitation.⁸ The women are not seen as persons who aided and abetted in their

⁵ See *infra* notes 139-144 and accompanying text. See also Norma Hotaling, Kristie Miller, & Elizabeth Trudeau, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective*, 18 YALE J.L. & FEMINISM 181 (2006).

⁶ See *infra* notes 176-187 and accompanying text explaining how the detention of juvenile prostitutes for the purposes of law enforcement cooperation can lead to further victimization of the young women.

⁷ See *infra* notes 176-177 and accompanying text detailing violence and intimidation that prostitutes face at the hands of their pimps. See also Neal Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791.

⁸ Integration of the Human Right of Women and the Gender Perspective, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Commission on Human Rights, E/CN.4/2005/71 (December 22, 2004).

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sexual exploitation but are seen as victims of human rights violations.⁹ The Las Vegas Metro needs to observe the international standards set forth by the United Nations and recognize a new paradigm in dealing with sex trafficking and sexual exploitation cases.¹⁰

The use of material witness holds are coercive and have a chilling effect on prosecuting the true criminals of the illegal sex trade. The girls are labeled material witnesses but are treated as enemy combatants. Once the prosecution gains the cooperation of girls who worked the sex trade, they are placed on material witness holds.¹¹ The material witness holds allow courts to detain the girls indefinitely.¹² Under the Nevada juvenile code, juveniles are not entitled to bail.¹³ They are detained at the discretion of the juvenile judge.¹⁴ Therefore, the girl must stay in custody pending the outcome of alleged the pimp's case.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See infra* notes 143-170 and accompanying text.

¹² *See infra* notes 170-173 and accompanying text.

¹³ NRS 62C.040 Detention hearing required for child alleged to be delinquent within certain period; written consent of juvenile court required for release after such hearing:

1. If a child who is alleged to be delinquent is taken into custody and detained, the child must be given a detention hearing before the juvenile court:

(a) Not later than 24 hours after the child submits a written application;
 (b) In a county whose population is less than 100,000, not later than 24 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined;
 (c) In a county whose population is 100,000 or more, not later than 6 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined; or
 d) Not later than 72 hours after the commencement of detention at a facility in which adults are not detained or confined, whichever occurs first, excluding Saturdays, Sundays and holidays.

2. A child must not be released after a detention hearing without the written consent of the juvenile court.

¹⁴ *See infra* notes 151-155 and accompanying text.

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I. HISTORICAL BACKGROUND

The purpose of this article is to examine the coercive application of material witness holds to juvenile prostitutes by Las Vegas Metro Police Department as they seek prosecution of actors in the sex trade including pimps. An argument is made for the employ of international standards for sexually exploited children who are required to cooperate with law enforcement. The analysis unfolds in four sections. The first section assesses the history of government response to prostitution and the metamorphosis of prostituted women from victims to co-actors in the sex trade. The second section then reviews the use of material witness holds as a coercive tactic utilized by law enforcement and the genesis of the material witness hold in post September 11th cases. The third section uses the foundation of prostitution prosecutions and material witness holds to examine the use of both by Las Vegas Metro Police. The fourth section then argues that the use of material witness holds to detain sexually exploited youth to cooperate with law enforcement causes secondary victimization and calls for the adoption of United Nations standards for sexually exploited and trafficked children. The UN standards for child prostitution victims recognize the child prostitutes as a vulnerable and exploited population. The conclusion offers three proposals to give child prostitutes legal rights and recognition.

A. *The Mann Act*

Human trafficking of women for sex work has a history that parallels the political and social development of the United States. Prostitution thrived in colonial New York prior to the American Revolutionary war. A British flesh merchant imported three thousand women from England and the West Indies to service the British military who then occupied New York.¹⁵ By the 1840s

¹⁵ TIMOTHY GILFOYLE, CITY OF EROS: NEW YORK CITY, PROSTITUTION AND THE COMMERCIALIZATION OF SEX (1992) 24 [hereinafter GILFOYLE]. Gilfoyle found that prostitution thrived during the British occupation of Revolutionary New York City. Large numbers of prostitutes congregated at the foot of Broad Street in temporary houses

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New York was described as the Gomorrah of the New World.¹⁶ Public response to the emergence of brothels and sexually permissive subcultures ranged from tacit acceptance to violent riots.¹⁷ Regional mores defined whether prostitutes were accepted or rejected by society.

The State of New York not only accepted prostitution, it protected women in the trade. Antebellum New York prostitutes used the law to protect themselves against violence and intimidation. Before the creation of a municipal police force in 1845, criminal prosecution in New York was a private matter.¹⁸ Individual citizens, not public officials, initiated most criminal charges.¹⁹ Shrewdly bringing legal proceedings against their aggressors, prostitutes utilized the machinery of the state to defend their interests and property rights.²⁰ The state was placed in the legally awkward position of protecting and defending

replacing those destroyed in the fire of 1776. Nicknamed Canvass-Town and Topsail Town after the material used for roofs, the buildings were described by William Duer as “cheap and convenient lodgings for the frail sisterhood, who plied their trade most briskly in the vicinity of the shipping and barracks.” The small districts of prostitutes thrived until economic development pushed it elsewhere after 1800. *Id.*

¹⁶ *Id.* at 29. Gilfoyle noted that from the 1820s, New York had an estimated 200 brothels but by the 1860s a police report detailed over 600. Sanitary workers and physicians, during their investigations of health conditions and overcrowding counted over 500 establishments. *Id.* at 31.

¹⁷ See JOHN DEMILIO AND ESTELLE FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (1997) at 140. Prior to the establishment of police forces, irate citizens occasionally attacked brothels as they did during the whorehouse riots in eighteenth century Boston and Maine and Pennsylvania in the 1820s. See also GILFOYLE, *supra* note 15 at 76. New York experience a “decade of riots” in the 1830s. Vigilantes pretending to be customers attacked madams in their brothels and women of the streets suffered attacks. Gilfoyle wrote that the increasing frequency of the attacks during the 1830s reflected, in part, the growing perception that prostitutes were fair game for the aggressions of frustrated males. *Id.* at 79.

¹⁸ GILFOYLE, *supra* note 15 at 82.

¹⁹ *Id.*

²⁰ *Id.*

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prostitution.²¹ Prostitutes were able to operate as independent agents and did not have pimps to exploit them. Civil actions were brought against clients who acted violently. Women transacted their business knowing that they had the protection of state.

The permissive attitude towards prostitution and vice in general began to change with the coming of the Progressive Era. The concurrent emergence of three social tensions led to the moral panic surrounding sex: immigration, urbanization and the sexuality of young women.²² Prominent white slave author E. Norine Law summarized:

The stock of the immigrants entering the United States, and especially its cities, is growing constantly worse. Drawn first from the higher and more intelligent types of northwestern Europe, our immigration has degenerated constantly to the poorest breeds of the eastern and southern sections of the continent.²³

²¹ See GILFOYLE, *supra* note 15 at 83. The author noted the precarious situation government action on behalf of prostitution created:

New York was unique amongst states in that it did not bar testimony from prostitutes or later forms of legal intervention which sought to regulate, control, and hinder the independence of prostitutes, antebellum New York saw governmental power invoked for their benefit. When prostitutes exercised property rights, the municipality was compelled to defend prostitution and prosecute its more violent enemies. Since antebellum government was devoted to primarily to protecting the interests of taxpayers and private property, a bewildered municipality faced an unappealing, imperfect choice: suppress sexual deviancy, punish prostitutes and thereby violate their (and ultimately others') property rights, or punish their male aggressors and tolerate the existence of prostitution. *Id.* at 83.

²² DAVID LANGUM, CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT (1993) 17 [hereinafter LANGUM].

²³ James Adams, *Alien Animals and American Angels: The Commodification and Commercialization of the Progressive Era White*

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Rising xenophobia due to the arrival of 13 million immigrants between 1900 and 1914 constructed the moral panic.²⁴ Jews, Italians and the French were singled out as ethnic groups that produced most of the pimps and prostitutes.²⁵

The moral decay of America was blamed directly on the increased migration of immoral immigrants who lacked the proper and religious endeavor of most Americans.²⁶ Urbanized and sexually active women were an affront to traditional rural American values. In 19th century America, a conspiracy of silence existed around sex that allowed a thriving sex industry outside the confines of a moralistic or traditional society. Segregated areas in American cities existed where prostitution thrived.²⁷ The rise of the cities and urbanization and dissolution of traditional rural family archetype prevalent in 19th century America sowed the seeds of moral decay.²⁸ Reformers attempted to halt any further decline.

Women and sexuality became a particular focus. A double standard existed for women in 19th century America. They were required to have the strictest purity.²⁹ Men had considerable freedom to indulge their sexuality before and outside of marriage.³⁰

The liberalization of sexual attitudes compounded by the overt sexuality of young women was troublesome for reformers.³¹

Slave, CONCEPT ONLINE JOURNAL, Spring 2005 *quoting* E. Norine. Law, *The Shame of a Great Nation: The Story of the White Slave Trade* (1909), available at http://www.publications.villanova.edu/Concept/2005/Alien_Animals_and_American_Angels.htm [hereinafter Adams].

²⁴ See LANGUM, *supra* note 11, at 17.

²⁵ *Id.*

²⁶ See Adams, *supra* note 23, at 10.

²⁷ Langum, *supra* note 22, at 21.

²⁸ *Id.* at 16.

²⁹ *Id.*

³⁰ John C. Burnham, *The Progressive Era Revolution in American Attitudes Towards Sex*, 59 JOURNAL OF AMERICAN HISTORY 885, 886 [hereinafter Burnham].

³¹ Langum *supra* note 11 at 17. Langum quotes legendary social worker and reformer Jane Addams: “never before in civilization have

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Writers portrayed young white women who became a new generation of urban, single professionals as easy prey for foreign men.³² Immigrant men of nefarious reputation were seeking to take advantage of the gullible young women.³³

Chicago at last has waked up to the realization of the fact that actual slavery that deals in human flesh and blood as a marketable commodity exists in terrible magnitude in the city today. It is slavery, real slavery, we are fighting. . . The white slave of Chicago is as much a slave as the negro [sic] was before the civil war [sic].³⁴

The tales were the foundation for the social construction of white slavery.³⁵

James Adams defined white slavery as an innocent white woman, usually (but not always) a second or greater generation American citizen, weakened by the convergent forces of industrial progress, alcohol, and public immorality, and thus easy prey for foreign/Jewish predators either acting directly or through their corrupt domestic agents.³⁶ Society became alarmed when it read about loose women offering sex for money.³⁷ The stories created a societal hysteria that eventually led to the legislation controlling

such numbers of young girls been suddenly released from the protection of home and permitted to walk unattended upon city streets and to work under alien roofs.”

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 27 quoting Clifford Roe, *Chicago's Civic Revolution That Shall Free The White Slaves*, CHICAGO TRIBUNE, October 17, 1909, at 4.

³⁵ Adams, *supra* note 23 at 10.

³⁶ *Id.*

³⁷ *Id.*

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the movement of women across state lines or disallowing women to engage in non-marital sexual relationships³⁸.

Rep. James R. Mann from Illinois introduced the act that bared his name in December 1909 at the request of Chicago prosecutors who claimed that girls and women were being forced into prostitution by unscrupulous pimps and procurers.³⁹ White slavery

³⁸ *Id.* at 2. Adams writes that by 1915 social reformers were no longer battling the existence of public vice, but were instead battling a monster of their own creation: the archetype of the White Slave. Growing out of the public campaigns of the social purity organizations as they disseminated their message of outrage against public vice, it had taken on a life of its own through the commodification of these campaigns in the form of consumable cultural artifacts. Indeed, by the second decade of the twentieth century the organized American traffic of women for the purposes of coercive prostitution had ceased to exist, if it ever existed at all, through the actions of the Social Purity organizations, but in its place now existed an enduring “urban legend” which to this day is still accepted as real. *Id.*

³⁹ White Slave Traffic (Mann) Act ch. 395, 36 Stat. 825 (1910) amended and codified at 18 U.S.C. §§ 2421-2424 (1988) [hereinafter Mann Act]. It was a five year penalty to buy or aid in the transport a woman for the purposes of prostitution, debauchery or other immoral purpose. If the woman or girl was under the age of 18, the fine doubled to ten years imprisonment. Congress made several amendments to the act to reflect growing societal concerns. The Mann Act faced several legal challenges most noted was the U.S. Supreme Court upholding the constitutionality of the Mann Act in *Hoke v. United State*, 227 U.S. 308, 33 S. Ct. 281, 57 L. Ed. 523 (1913).. Four years later, the Supreme Court broadened the scope of the act in *Caminetti v. United States*, 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917). The Court held that the act applied to noncommercial acts of immorality and seized on the phrase “any other immoral purpose,” concluding that Congress intended to prevent the use of interstate commerce to promote sexual immorality. This interpretation radically changed the scope of the act. The FBI continues to use the Mann Act to prosecute. In 1978, Congress amended the act address of child pornography. Other amendments include making the act gender neutral, to address the sexual exploitation of boys and girls. (Pub. L. No. 95-225, 92 Stat. 8-9). All references to debauchery and any other immoral purpose were replaced by the phrase “any sexual

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became the popular nomenclature to connote men of scurrilous origin who drugged and coerced females into prostitution.⁴⁰ The legislation sought to criminalize the act of transporting women across state lines for the purposes of sex or prostitution.⁴¹ The Sixty First Congress addressed the problem by passing the White Slave Traffic (Mann) Act.

The white slavery hysteria did not stop states from harshly punishing women who were either prostitutes or having sexual liaisons outside of marriage. The Mann Act was used to prosecute beyond the scope of its original legislative intent of commercial vice. The Mann Act became a mandate on prosecuting sexually promiscuous women.⁴²

Caminetti v. Unites States upheld convictions where there was no evidence of prostitution by the women, involuntary or coerced travel or profit garnered by the defendants.⁴³ The Court also found that women were co-conspirators in the transport across the state lines for purposes of prostitution.⁴⁴ The Court diverged in the opinion of Progressive Era reformers that women were victims.

activity for which any person can be charged with a criminal offense" (Pub. L. No. 99-628, 100 Stat. 3511-3512).

⁴⁰ Adams *supra* note 23 at 11, describes the typified white slave as an innocent white woman, usually (but not always) a second or greater generation American citizen, weakened by the convergent forces of industrial progress, alcohol, and public immorality, and thus easy prey for foreign/Jewish predators either acting directly or through their corrupt domestic agents. It is only natural that as a composite of different perceived "evils" in American society that the white slave "problem" was considered the greatest threat facing the United States.

⁴¹ *Id.*

⁴² 236 U.S. 140, 145.

⁴³ 242 U.S. 470 (1917). *See also* Marlene Beckman, *The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO.L.J. 1111, 1118 (1984) [hereinafter Beckman].

⁴⁴ *Id.* at 1120.

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Justice Holmes declared in *United States v. Holt*, “we abandon the idea that the woman is always the victim”.⁴⁵

The Mann Act illustrates the evolution of state and federal approaches to prostitution. Women in the sex trade in the early history of the U.S. were ignored by the states and allowed to ply their trade in red light districts. Once local and federal agencies sought to intervene, they became simultaneous victims and defendants. The dichotomy would pervade federal law enforcement in material witness cases and trafficking cases.

The material witness dichotomy emerged after September 11th. Federal law enforcement used material witness laws to detain individuals indefinitely prior to prosecution creating the witness/defendant category. Illegal immigrants working in the sex trade are detained and deported unless they cooperate and testify creating a detainee/witness category. Each category of witness/defendant/detainee exists at the mercy or discretion of federal and state prosecutors and their rights are significantly diminished in the process.

B. Material Witness History

One of the most salient guarantees of the United States constitution is the right against unreasonable searches and seizures as enumerated in the Fourth Amendment.⁴⁶ The government in the administration of justice cannot seize or imprison a person without probable cause or a warrant. The power to arrest and detain witnesses however, was enumerated by statute and common law.⁴⁷

⁴⁵ *Id.*

⁴⁶ U.S. CONST. art. 14, The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

⁴⁷ See Act of Sept. 24, 1789, ch. 20, § 30, 33, 1 Stat. 73. The Act provided for taking the depositions in civil cases of “any person... who shall live at a greater distance from the place of trial than one hundred

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The power to arrest and detain witnesses existed by statute from 1789 until 1948 when Congress repealed the material witness statutes.⁴⁸ No formal authority to arrest material witnesses existed but the creation of Federal Rule of Criminal Procedure 46(b) in

miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district,... or is ancient or very infirm." *Id.* § 30, 1 Stat. at 88. It also provided that "any person may be compelled to appear and [be] depose[d], and allowed if witness could not be produced at trial, the deposition could be used in their place." *Id.*

⁴⁸ See 28 U.S.C. 657 repealed 1948.

Any judge or other officer who may be authorized to arrest and imprison or bail persons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appearance to testify in the case. And where the crime or offense is charged to have been committed on the high seas, or elsewhere within the admiralty and maritime jurisdiction of the United States, he may, in his discretion, require a like recognizance, with such sureties as he may deem necessary, of any witness produced in behalf of the accused whose testimony, in his opinion, is important and is in danger of being otherwise lost.

See 28 U.S.C. 659 repealed 1948.

Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony, or until he gives the recognizance required by said judge.

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1946 gave implied authority.⁴⁹ The courts interpreted and allowed the government the implication of authority to arrest and detain witnesses.⁵⁰

The Bail Reform Act of 1966 continued the ambiguity of holding material witnesses. The Act delineated no explicit authority to arrest or detain witnesses.⁵¹ The Act only provided for their release. Congress addressed the ambiguity of the law in 1984 with the passage of most recent version of the material witness

⁴⁹ See Stacey Studnicki and John Apol, *Witness Detention and Intimidation: the History and Future of Material Witness Law*, 76 ST. JOHN'S L. REV. 483, 491-492. [hereinafter Studnicki & Apol]. See also Fed. R. Crim. P. 46(b) (1946)_(amended 1966).

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court or commissioner may require him to give bail for his appearance as a witness, in an amount fixed by the court or commissioner. If the person fails to give bail the court or commissioner may commit him to the custody of the marshal pending final disposition of the proceeding in which the testimony is needed, may order his release if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

⁵⁰ See *Bacon v. U.S.* 449 F.2d 933, 938 . The court found that the legislative and statutory history of Rule 46(b) support the proposition that a power to arrest should be implied. Such a power was expressly provided for by statute until 1948. See Act of September 24, 1789, ch. 20, § 33, 1 Stat. 91; Act of August 8, 1846, ch. 98, § 7, 9 Stat. 73; 28 U.S.C. §§ 657, 659 (1925), repealed by Act of June 25, 1948, Pub.L.No. 772, ch. 645, § 21, 62 Stat. 862.

⁵¹ Act of June 22, 1966, Pub. L. No. 89-465, § 3(a), 80 Stat. 216 (codified at 18 U.S.C. § 3149 (repealed 1984)). If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

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statutes.⁵² The modification allowed for conditions of release and confinement in accordance with the federal statute that regulates the detention of defendants pending trial.⁵³ The modification also gave courts explicit authority to arrest curing the ambiguity of addressed in *Bacon v. U.S.*⁵⁴

The statutory requirements for detention of material witnesses remain vague and can lead to abuse by government officials.⁵⁵ If a person is a witness in a federal criminal

⁵² Act of Oct. 12, 1984, § 3144, 1984 U.S.C.C.A.N. at 3211. The Bail Reform Act as amended in 1984 is reported at 18 U.S.C. § 3141 et seq.

⁵³ 18 U.S.C. § 3142 Release of detention of a defendant pending trial. *See also supra* note 47.

⁵⁴ *See Studnicki & Apol, supra* note 49. *See also supra* note 55, at 492-493. *See also supra* note 9 18 U.S.C. § 3142 and *supra* note 5, *Bacon v. U.S.* at 938.

⁵⁵ 18 U.S.C. § 3142 Release of detention of a defendant pending trial
f) Detention hearing.--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

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proceeding, the government need only show the “impracticability”

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of Title 18, United States Code; or

(2) Upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves--

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

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of securing the person's presence by subpoena.⁵⁶ A subpoena is not a prerequisite⁵⁷ for detention. A federal officer need only assert that the witness is material and the use of a subpoena is impractical.⁵⁸

The rights granted to the material witness detainees are unclear. A detainee may have counsel appointed by the government if he cannot afford private counsel.⁵⁹ A detainee has a right to a detention hearing⁶⁰ but may be detained "for a reasonable period of time".⁶¹ The curative effect for detained witnesses may

⁵⁶ See 18 U.S.C. § 3144 Release or detention of material witness. If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

⁵⁷ See *U. S. v. Anfield*, 539 F.2d 674 (1976). Court in exercise of its sound discretion has power to issue warrant of arrest, not preceded by subpoena, for a material witness.

⁵⁸ See *U.S. v. Feingold*, 416 F.Supp. 627 (E.D.N.Y. 1976).

⁵⁹ See *In re Class Action Application for Habeas Corpus on Behalf of All Material Witnesses in Western Dist. of Texas*, 612 F.Supp. 940. (W.D.Tex.1985) When an individual is arrested and the government seeks to detain him as material witness, pursuant to 18 U.S.C.A. § 3144, and a judicial officer determines that individual should not be released on his own recognizance or on an unsecured appearance bond, an attorney must be appointed to represent individual if individual is financially unable to obtain representation.

⁶⁰ See *Challenging the Detention of Client Who has been Declared a Material Witness or the Incommunicado Detention of Any Client*, Kent V. Anderson, Jonathan E. Hawley, Richard H. Parsons, 27 MAR CHAMPION 14.

⁶¹ See 18 U.S.C. § 3144, *supra* note 55.

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be giving a deposition,⁶² but that does not automatically guarantee release.⁶³ Detainees have sought to curtail how the government uses or abuses the material witness statute.⁶⁴ The United States

The Supreme Court has set limits to government deprivation of liberty as secured by the Fifth Amendment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

⁶² Rule 15, Fed. R. Crim. P

(a) When Taken.

(1) In General. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) Detained Material Witness. A witness who is detained under 18 U.S.C. § 3144 may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript. (b) to (h) [Omitted]

⁶³ See 2 A.L.R. Fed.2d 425 Validity, Construction, and Application of 18 U.S.C.A. § 3144, Governing Arrest and Detention of Material Witnesses to Federal Crimes

Disputes concerning the release of witnesses who were legitimately detained in the first instance have generally arisen in the context of motions by such witnesses to have their depositions taken so that they could be released in accordance with the terms of the statute. In determining whether to release detainees, courts have had to take into consideration the possibility that deposition testimony might be found to be inadmissible at the actual trial as a deprivation of the right of the defendant to confront the witnesses against him, and have sometimes found that continuation of the detention was necessary in such situation.

⁶⁴ See *U.S. v. Awadallah*, 349 F.3d 42 (2nd Cir. 2003), *cert denied*, 125 S. Ct. 861 (2005) where the United States Court of Appeals found the detention of material witnesses for the purpose of securing grand jury testimony was constitutional.

The United States District Court in the 2002 decision (*U.S. v. Awadallah*, 202 F.Supp 2d 55, 58-59 subsequently overruled by United States Court

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courts have, however, given government great leeway in interpreting the use of the detention of material witnesses depending upon the status of the detainee.⁶⁵

of Appeals) dismissing the government's indictments summarized the Awadallah's detention history. On Friday, September 21, 2001, FBI agents in California arrested Osama Awadallah as a material witness for a grand jury investigation of the September 11th terrorist attacks. Approximately three hours later, an affidavit in support of an application for Awadallah's arrest under § 3144 was submitted to a judge of this Court by an FBI agent and a warrant was issued. Over the next twenty days, Awadallah was treated as a high-security inmate, detained in various prisons across the country. Awadallah was eventually flown to New York, where he was kept in solitary confinement and shackled and strip-searched whenever he left his cell. He was unable to have family visits or use the telephone because the prison had no operating telephones and was on a high security alert which prevented family visits. Awadallah was held as a material witness in a grand jury investigation; he was not arrested based on probable cause to believe that he had committed any crime.

⁶⁵ See *Al-Marri v. Wright*, ___ F.3d ___, 2007 WL 1663712 The Court of Appeals for the Fourth Circuit granted habeas relief and rejected the government's contention that Al-Marri was an enemy combatant. The court reviewed Al-Marri's detention history. Al-Marri, a citizen of Qatar, lawfully entered the United States with his wife and children on September 10, 2001, to pursue a master's degree at Bradley University in Peoria, Illinois, where he had obtained a bachelor's degree in 1991. The following day, terrorists hijacked four commercial airliners and used them to kill and inflict grievous injury on thousands of Americans. Three months later, on December 12, 2001, FBI agents arrested al-Marri at his home in Peoria in the Government's investigation of the September 11th attacks; *U.S. v. Awan*, 459 F.Supp.2d 169 (E.D.N.Y. 2006) The U.S. District court granted Awan's motion in part dismissing two counts of the indictment and denied the motion in part refusing to dismiss one count of the indictment. Awan was originally detained on charges of credit card fraud but a material witness warrant was issued to hold him in connection with investigation of events of September 11, 2001. After testifying before a grand jury, Awan continued to be held and was later charged with knowingly and intentionally conspire to provide material support and resources, as defined in 18 U.S.C. § 2339A(b) (2005),

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II. LEGAL BACKGROUND

A. Coercive Use of Material Witness Warrants And Enemy Combatant Designation

The aftermath of the September 11th attacks saw the federal government restructuring federal criminal law and procedure to give the federal law enforcement more latitude. The passage of the Authorization for Use of Military Force (AUMF) on September 18, 2001 began the period of legislative overhauling culminating with the passage of the USA PATRIOT Act.⁶⁶ The government would use the AUMF to justify the detention of U.S. citizens under the designation of enemy combatant.

The Northern Alliance fighting in Afghanistan took U.S. born Yasser Hamdi into custody in 2001.⁶⁷ (Hamdi's father filed this habeas petition on his behalf in the Eastern District of Virginia

knowing and intending that they were to be used in preparation for, and in carrying out, a conspiracy to murder, kidnap or maim a person or persons outside the United States; *Al-Kidd v. Gonzalez*, 2006 WL 2682346. Al-Kidd is pursuing a suit against the government for false imprisonment based on his material witness status and detention. The FBI investigated recent Islamic convert and University of Idaho student Al-Kidd after the September 11th attacks. As part of the investigation, Al-Kidd, a citizen of the United States, met with FBI officers on a number of occasions. The FBI eventually sought and received a material witness warrant for Al-Kidd based on his acquaintance with another University of Idaho Islamic student who was later charged with making false statements and visa fraud. Al-Kidd was detained but his testimony was never sought and he was eventually released from custody.

⁶⁶ Pub. L. No. 107-40, 115 Stat. 224 (2001) (codified at 50 U.S.C.A. § 1541 (2003)).

Authorization for Use of Military Force

(a) IN GENERAL.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons

⁶⁷ See *Hamdi v. Rumsfeld* (Hamdi III), 316 F.3d 450, 459-62 (4th Cir.), petition for cert. filed, No. 03-6696 (U.S. Oct. 1, 2003).

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alleging, among other things, that the Government held his son in violation of the Fifth and Fourteenth Amendments.⁶⁸ The petition alleged that Hamdi was without access to legal counsel or notice of any charges pending against him.⁶⁹ In January 2002, the government transferred Hamdi to Guantanamo Bay, the holding place for non-citizen enemy combatants.⁷⁰

The District Court ordered the government to allow Hamdi's attorney legal access. The government appealed to the United States Court of Appeals for the Fourth Circuit.⁷¹ The Fourth Circuit reversed that order, holding that the District Court had failed to extend appropriate deference to the Government's security and intelligence interests.⁷² The Fourth Circuit remanded the case instructing the Eastern District to consider "the most cautious procedures first".⁷³ On remand, the government filed an affidavit asserting that Hamdi was indeed involved with fighting with the Taliban.⁷⁴ The District Court criticized the generic and hearsay nature of the affidavit and demanded the government produce Hamdi related materials for an *in camera* review.⁷⁵ The government appealed the order of production to the Fourth Circuit. The Fourth Circuit reversed citing no factual inquiry or evidentiary hearing allowing Hamdi to be heard or to rebut the Government's assertions was necessary or proper.⁷⁶ Hamdi appealed and the Supreme Court granted certiorari.

The Supreme Court curtailed the Executive branch's interpretation of the power granted by the AUMF in *Hamdi v. Rumsfeld*⁷⁷. In *Hamdi*, while the Court recognized the right of the

⁶⁸ *Hamdi v. Rumsfeld*, 542 U.S. 507, 510.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 296 F.3d 278, 279, 283 (2002).

⁷³ *Id.* at 284.

⁷⁴ 542 U.S. at 514

⁷⁵ *Id.*

⁷⁶ 316 F.3d 450, 469.

⁷⁷ 542 U.S. 507 (2004)

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government to detain enemy combatants, those designated as such deserved notice for the factual basis for the classification and a fair opportunity to rebut the government's assertions.⁷⁸ The Court, however, did not disturb the right of the Executive Branch to declare detainees enemy combatants.⁷⁹

The FBI arrested Jose Padilla on a material witness warrant at Chicago O'Hare Airport in May 2002.⁸⁰ Padilla appeared before the U.S. District Court for the Southern District of New York (the warrant issuing court) and where the court appointed an attorney.⁸¹ In June 2002, President Bush declared Padilla an enemy combatant which gave the government the power to transfer Padilla to military custody.⁸² Padilla's attorney immediately filed a petition for writ of habeas corpus on his behalf in the U.S. District Court for the Southern District of New York.⁸³ The New York district court accepted the Executive Branch's claim that it had authority under the AUMF to detain U.S. citizens arrested in the U.S. as enemy combatants, but held that Padilla was entitled to access to a lawyer and to a factual hearing.⁸⁴ Padilla's attorney appealed. The U.S. Court of Appeals for the Second Circuit reversed.⁸⁵ It held that the President had no constitutional or statutory authority to detain indefinitely without criminal charge U.S. citizens arrested in the United States.⁸⁶ The court found that Padilla must be charged with a crime, detained in some other legally authorized status (e.g., as a material witness), or released. The government appealed and the Supreme Court granted certiorari.

In *Padilla v. Rumsfeld*, the Court ordered dismissal of the habeas corpus petition without prejudice, holding that the District

⁷⁸ *Hamdi*, 542 U.S. at 533.

⁷⁹ *See Padilla ex rel. Newman v. Bush* (Padilla I), 233 F. Supp. 2d 564, 569, 570 (S.D.N.Y. 2002).

⁸⁰ *Id.* at 569.

⁸¹ *Id.* at 569.

⁸² *Id.* at 571.

⁸³ *Id.* at 571.

⁸⁴ *Id.* at 590-91.

⁸⁵ *Padilla v. Rumsfeld*, 352 F.3d 695 (2003).

⁸⁶ *Id.* at 718.

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Court for the Southern District of New York was not the appropriate court to consider it.⁸⁷ Padilla's counsel filed a subsequent habeas in United States District Court for the District of South Carolina on July 2, 2004.⁸⁸ After detaining Padilla for nearly four years as an enemy combatant, the government transferred Padilla out of military custody and to the custody of the U.S. District Court for the Southern District of Florida.⁸⁹ The Supreme Court denied Padilla's request for review his custodial status, determining the custodial transfer from the Southern District of New York to the United States District Court for the District of South Carolina rendered his legal status moot.⁹⁰ In a pointed dissent, however, Justice Ginsburg asks the question the Court refused to decide:

Does the President have the authority to imprison indefinitely a United States citizen arrested in United States soil, distant from a combat zone based on an Executive declaration that the citizen was, at the time of his arrest, an enemy combatant?⁹¹

⁸⁷ *Padilla v. Rumsfeld*, 542 U.S. 426, 442. (2004).

⁸⁸ *Padilla v. Hanft*, 126 S. Ct. 1649, 1650.

⁸⁹ *Id.* at 442. The Court found that district courts are limited to granting habeas relief "within their respective jurisdictions." 28 U.S.C. § 2241(a). The Court interpreted the language to require "nothing more than that the court issuing the writ have jurisdiction over the custodian." *Braden*, 410 U.S., at 495, 93 S.Ct. 1123. Thus, jurisdiction over Padilla's habeas petition lies in the Southern District only if it has jurisdiction over Commander Marr. The Court concluded it does not. *Id.*

⁹⁰ *Id.* at 455. The change in custody, and the underlying change in rationale, should be challenged in the place the Government has brought them to bear and against the person who is the immediate representative of the military authority that is detaining him. That place is the District of South Carolina, and that person is Commander Marr. The Second Circuit erred in holding that the Southern District of New York was a proper forum for Padilla's petition. *Id.*

⁹¹ *Padilla v. Hanft*, 126 S. Ct. 978 (2006).

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Justice Ginsburg argued that the Court should have decided the issue to prevent a future re-designation of Padilla as an enemy combatant.⁹²

The Supreme Court has obfuscated any interpretation one could glean from federal law enforcement's use of material witness holds as a pretext for further investigation or prosecution. The legal ambiguity leaves federal law enforcement with the continuing opportunity to have American citizens declared enemy combatants or material witnesses. The designation of enemy combatant and/or material witness gives detainees limited rights of due process. *Hamdi* did give detainees fundamental rights but did not eliminate the use of enemy combatant status. In contrast, the *Padilla* Court failed to decide the crucial legal question of an absolute allowance or disallowance of the designation of enemy combatant. The Court also failed to address the substantive legal issue of using material witness designation to detain and investigate U.S. citizens. Lower courts have issued divergent opinions on enemy combatant status and material witness detentions.

In *Al-Marri v. Wright*, the U.S. district court found that President did not have inherent constitutional authority to order seizure and indefinite military detention of civilian.⁹³ In *U.S. v. Awadallah*, the United States Court of Appeals found the detention of material witnesses for the purpose of securing grand jury testimony was constitutional.⁹⁴ The Supreme Court denied certiorari.⁹⁵ Courts are conflicted on this issue and will eventually

⁹² *Id.*

⁹³ See *Al-Marri v. Wright*, *supra* note 65, 487 F.3d at 194.

⁹⁴ See *U.S. v. Awadallah*, *supra* note 64, 349 F.3d at 83. The court held that: (1) material witness statute authorized detention of grand jury witnesses; (2) defendant was properly detained pursuant to material witness statute when he was held for several weeks without being allowed to give his deposition and obtain release; (3) material witness warrant was valid; and (4) information and evidence obtained by FBI as result of illegal searches and seizures twenty days before defendant appeared before the grand jury was not excludable in perjury trial as fruit of the improper searches and seizures. *Id.*

⁹⁵ *Awadallah v. U.S.*, 543 U.S. 1056 (2005).

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need the guidance of the Supreme Court regarding the coercive tactics of law enforcement and the use of material witness detentions and enemy combatant status. The Supreme Court failed to end the legal quagmire surrounding enemy combatant or material witness designation. States not only have no guidance as to what is considered a breach of constitutional rights, vulnerable populations are at risk. Police detain scores of prostituted women and children seeking cooperation on trafficking and sexual exploitation cases. Immigrant women who face detention and deportation are extraordinarily vulnerable and illustrate the coercive tactics of being a witness/detainee are not just used by the Las Vegas Metro Police but by federal law enforcement as well.

B. Trafficked Women and Children

The trafficking in women and children for prostitution is one of the fastest growing areas of international criminal activity and cause for alarm to the United States and the international community.⁹⁶ More than 700,000 people are trafficked each year worldwide; some 50,000 to the United States.⁹⁷ The overwhelming majority of those trafficked are women and children.⁹⁸ At least 100,000 illegally immigrated women prostitutes work in the U.S.⁹⁹ The trafficked women have

⁹⁶ Francis T. Miko & Grace (Jea-Hyun) Park, *Trafficking in Women and Children: The U.S. and International Response*, Congressional Research Service, Library of Congress, March 3, 2002 [hereinafter CRS Trafficking Study] at 1.

⁹⁷ *Id.*

⁹⁸ See Susan Tiefenbrun, *The Saga of Susannah a U.S. Remedy for Sex Trafficking in Women: the Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 113-114 [hereinafter Tiefenbrun].

⁹⁹ Press Release, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, New Global Treaty to Combat “Sex Slavery” of Women and Girls, U.N. Doc. ODCCP/2098 (February 2000) [hereinafter U.N. ODCCP]. Official U.S. government statistic place the number of trafficked people who enter the U.S. at 18,000 - 20,000 annually. See U.S. Dept. of State Report, *infra* note 106 at 3.

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backgrounds of poverty, illiteracy, civil strife and low social and political status.¹⁰⁰ Traffickers can exploit the conditions of trafficked women for their own financial gain.¹⁰¹

¹⁰⁰ See Kelly Hyland, *Protecting Victims of Human Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 35 [hereinafter Hyland]. See also CRS Trafficking Study *supra* note 96 at 2-3 that details the reasons for the rise in trafficked women and children:

1. the continuing subordination of women in many societies, as reflected in economic, educational, and work opportunity disparities between men and women. Many societies still favor sons and view girls as an economic burden. Desperate families in some of the most impoverished countries sell their daughters to brothels or traffickers for the immediate payoff and to avoid having to pay the dowry to marry off daughters;
2. the hardship and economic dislocations caused by the transition following the collapse of Communism in the former Soviet Union and Eastern Europe, as well as the wars in the former Yugoslavia. The lack of opportunity and the eagerness for a better life abroad have made many women and girls especially vulnerable to entrapment by traffickers. With the weakening of law enforcement in post-Communist societies, criminal organizations have grown and established themselves in the lucrative business of international trafficking;
3. The high demand, worldwide, for trafficked women and children for sex tourism, sex workers, cheap sweatshop labor, and domestic workers. Traffickers are encouraged by large tax-free profits and continuing income from the same victims at very low risk;
4. The priority placed on stemming illegal immigration in many countries, including the United States, has resulted in treatment of trafficking cases as a problem of illegal immigration, thus treating victims as criminals. When police raid brothels, women are often detained and punished, subjected to human rights abuses in jail, and swiftly deported. Few steps have been taken to provide support, health care, and access to justice. Few victims dare testify against the traffickers or those who hold them, fearing retribution for themselves and their families since most governments do not offer stays of deportation or adequate protection for witnesses.

¹⁰¹ *Id.* at 35.

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Women are lured into traveling to unknown regions with the promise of high wages and civilized working conditions.¹⁰² However, the women encounter slave-like wages and inhumane working conditions and indebtedness to their traffickers.¹⁰³ Women who are trafficked for the sex industry fare worse than other trafficking victims.¹⁰⁴ Asian prostitutes in the U.S. may sell for \$20,000 each.¹⁰⁵ The smuggling fees keep trafficked women ensnared to their trafficker and fear of reprisals keep the women from seeking help.¹⁰⁶ Trafficked women may suffer retribution and isolation if they seek help.¹⁰⁷ They are reluctant to seek help from law enforcement.¹⁰⁸ Trafficked women face potential death upon returning home.¹⁰⁹

Congress passed the Trafficking Victims Protection Act (TVPA) of 2000 to combat the crisis of international trafficking of women to the U.S.¹¹⁰ TVPA acknowledges the pervasive problem

¹⁰² Fara Gold, *Redefining the Sex Trade: Current Trends in International Trafficking of Women*, 11 U. MIAMI INT'L & COMP. L.REV. 99, 110 [hereinafter Gold]

¹⁰³ *Id.* at 115.

¹⁰⁴ See Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 113-114 [hereinafter Farley].

¹⁰⁵ See UN ODCCP at 2.

¹⁰⁶ See Gold, *supra* note 102 at 119.

¹⁰⁷ See Hyland, *supra* note 100 at 45.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 22 U.S.C. § 7107(b)(1) (2004). The TVPA recognized and addressed the limitation of U.S. legislation that treated trafficked women as criminals and illegal aliens as opposed to the victims of a transnational criminal enterprise and the legislation recognized the danger that trafficked women faced upon return to their native countries. (14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of

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of trafficking and seeks to aid its victims.¹¹¹ The act includes a provision for the certification of trafficking victims who want to cooperate in the prosecution of traffickers. Trafficking victims who choose to testify are deemed “victims of severe forms of trafficking” and are allowed the potential of remaining in the U.S. during the prosecution of the trafficker under a T-visa or upon the determination of the Department of Homeland Security.¹¹²

offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

(18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes. (1) to (13) and (21) to (24) [Omitted]

¹¹¹ *Id.*

¹¹² 22 U.S.C.A. at (2)(b)(E) Certification(i)

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The T-visa certification entails cooperation in the investigation including: 1) the identification and location of the trafficker; 2) testimony against trafficker; 3) cooperation with production of evidence and information;¹¹³ and 4)

be willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.¹¹⁴

The lure of having a T-visa puts the trafficked women in precarious and dangerous predicaments. Trafficked women who choose to cooperate with U.S. law enforcement risk reprisals. The lives of trafficked women contain physical and sexual abuse¹¹⁵ on a routine basis. Trafficked women who cooperate with U.S. law enforcement fear for their lives and the lives of their families in their home countries.¹¹⁶

The State Department completed an assessment TVPA implementation in 2003.¹¹⁷ Protection and assistance for

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and (II)(aa) has made a bona fide application for a visa under section 1101(a)(15)(T) of Title 8, as added by subsection (e) of this section, that has not been denied; or (bb) is a person whose continued presence in the United States the Attorney General and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

¹¹³ 22 U.S.C.A. at (2)(b)(E) Certification (iii) Investigation and prosecution defined

¹¹⁴ *Id.* at (2)(b)(E) Certification (iv) Assistance to investigations

¹¹⁵ See Farley, *supra* note 104 at 124.

¹¹⁶ See Tiefenbrun, *supra* note 98 at 161.

¹¹⁷ See U.S. Dept. of State, Assessment of U.S. Activities to Combat Trafficking in Persons (2003) 9, available at <http://www.state.gov/documents/organization/23598.pdf> [hereinafter U.S. Trafficking Assessment].

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trafficking victims is not authorized without certification.¹¹⁸ The Department of Justice awarded twelve grants totaling \$9.5 million to non-governmental organizations to provide aid to “precertification” trafficked victims with assistance for comprehensive services.¹¹⁹ The DOJ seeks to service thousands of trafficking victims with grants averaging \$750,000 per agency.¹²⁰

Certification and services are provided upon cooperation with authorities.¹²¹ Once cooperation is established, a panoply of programs and services are available sponsored or funded by a host of federal agencies. The Department of Health and Human Services provided certification for 400 adult and 28 child trafficking victims.¹²² DHHS acknowledged the refugee programs did not provide for the needs of trafficked persons.¹²³ DHHS implemented programs and services focused strictly on the needs of trafficking victims. DHHS allocated \$4.6 million in grants for 15 organizations to provide temporary housing, independent living skills, cultural orientation, transportation needs, education programs and legal assistance to the certified trafficked persons.¹²⁴

The vocational and legal needs of trafficking victims are addressed as well. The Department of Labor instructed its regional offices to aid trafficking victims with vocational and educational needs.¹²⁵ Congress directed the Legal Services Corporation to assist trafficking persons who have legal problems.¹²⁶ Federal government agencies are able to assist a very restricted number of trafficking victims. The victims are vetted by the Department of Homeland Security before they are able to access the programs and services. It is imperative that the U.S. adopt international

¹¹⁸ *Id.* at 5. See also 22 U.S.C.A. at (2)(b)(E) Certification(i), *supra* note 90.

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 8.

¹²⁶ *Id.* at 8.

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standards in the treatment of trafficked women and reconfigure trafficking assistance to aid all victims of trafficking. The U.N. has given trafficked women legal recognition and appointed an investigative liaison.

The U.N. acknowledged the plight of trafficked women by authoring principles and guidelines and establishing a Special Rapporteur on trafficking of women and children.¹²⁷ The principles and guidelines emphasize the promotion and protection of the human rights of trafficked women.¹²⁸ The principles include decriminalizing trafficked persons who have illegally entered countries¹²⁹ and banning the practice of confining trafficked women in detention facilities.¹³⁰

The report additionally recommends trafficked persons be protected from further exploitation and have access to adequate

¹²⁷ See U.N. Econ. & Soc. Council [ECOSOC], Report of the Special Rapporteur on trafficking in persons, especially women and children, *Integration of Human Rights of Women and the Gender Perspective*, U.N. Doc. E/CN.4/2005/71 (December 22, 2004) [hereinafter Special Rapporteur Report].

¹²⁸ U.N. Econ. & Soc. Council [ECOSOC], Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. Doc. E/2002/68/Add.1 (May 20, 2002) [hereinafter ECOSOC Report].

¹²⁹ *Id.* at 4. Protection and assistance, Guideline 7: Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

¹³⁰ *Id.* at 10. Guideline 6: Protection and support for trafficked persons 1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.

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physical and psychological care.¹³¹ The report details how law enforcement can assist trafficked women as opposed to the U.S. response that criminalizes their behavior and seeks cooperation without a support apparatus. The legal assistance would include shelters, protection from traffickers, and travel assistance to home country.¹³² The Special Rapporteur noted trafficked women and children are seen as a 'law and order problem' and penalized by being charged with prostitution.¹³³

Women are willing to risk their lives to avoid being treated as illegal aliens or criminals by the courts. Trafficked women in the U.S. illegally face detention and deportation whether or not they are convicted for working in the illegal sex trade.¹³⁴ Once the women are deported, they face a ten-year ban on reentering the U.S.¹³⁵ Trafficked women may seek to stay in the U.S. and cooperate with law enforcement but the number of T-visas granted by the U.S. government is limited. As of June 2003, the Department of Homeland Security received 453 applications and granted 172 T-visas.¹³⁶ The number of special visas that can be issued by ICE is 5000.¹³⁷ Very few trafficked women will ever be

¹³¹ *Id.* at 5.

¹³² *Id.*

¹³³ Special Rapporteur Report, *supra* note 124 at 6.

¹³⁴ See Wendy Gonzalez, *Human Trafficking: Criminalization of Victims in the Sex Industry*, 11 BUFF. WOMEN'S L.J. 19, 23-24.

¹³⁵ See 8 U.S.C. § 1101 and DANIEL KASTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY*, 2007 10. Kastroom notes that since 1997 more than 300,000 people have been deported from the United States because of post-entry criminal conduct. See also Michael O'Connor and Celia Rumann, "The Death of Advocacy in Reentry After Deportation Cases" *Champion* November 1999 available at <http://www.criminaljustice.org/public.nsf/ChampionArticles/99nov03?OpenDocument>. O'Connor and Rumann note the changes in the law that force quick and problematic guilty pleas for immigrants who have a history of being deported from the U.S., reenter the country and face up to 20 year imprisonment penalties.

¹³⁶ See U.S. Trafficking Assessment *supra* note 117 at 9.

¹³⁷ See 8 U.S.C. § 1101(a)(15)(s)(i)(I)(2001) Aliens and Nationality: Immigration and Nationalization: General Provisions: Definitions and 8

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able to take advantage of the special immigrant visa or be able to cooperate with the Department of Homeland Security.

III. LAS VEGAS METRO POLICE

A. Las Vegas and Child Prostitution

Sex trafficking is a pernicious problem for Las Vegas. As the city became the fastest growing city in the U.S, it experienced problems unique to a culture that features gambling and emphasizes adult entertainment. The seamier side of Las Vegas began to expand as well. Juvenile prostitution arrests increased over the decade that Las Vegas' population and tourist numbers soared.¹³⁸ Las Vegas Metro Police Department noted the rise in pimp and child prostitute arrests as far back as 1997. Las Vegas Metro Police arrested three pimps and twenty-four child prostitutes in 1994 but just three years later the numbers soared to thirty-three pimps arrested and sixty-two child prostitutes¹³⁹. In 2004, Las

U.S.C. § 1153 Allocation of Immigrant visas (4) Certain Special Immigrants

¹³⁸ See Molly Ball *The Wisdom of Experience*, LAS VEGAS SUN, July 13, 2005 quoting Henry Cellini, a nationally recognized expert on child abuse, based in Albuquerque, [who] said Las Vegas is in a position to lead the nation in dealing with prostitution issues, "I do consulting nationwide, and no one has a problem even remotely similar to the one here" available at <http://www.lasvegassun.com/sunbin/stories/sun/2005/jul/13/519043251.html>.

¹³⁹ See Glen Puit, *Juvenile Prostitution Arrests Increase*, LAS VEGAS REVIEW JOURNAL, October 25, 1997, [hereinafter Puit] available at [http://nl.newsbank.com/nl-earch/we/Archives?p_product=LVRB&p_theme=lvrB&p_action=search&p_maxdocs=200&p_text_search0="Juvenile%20Prostitution%20Arrests%20Increase"&s_dispstring=Juvenile%20Prostitution%20Arrests%20Increase%20AND%20date\(1997\)&p_field_date-0=YMD_date&p_params_date-0=date:B,E&p_text_date0=1997&xcal_numdocs=20&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no](http://nl.newsbank.com/nl-earch/we/Archives?p_product=LVRB&p_theme=lvrB&p_action=search&p_maxdocs=200&p_text_search0=). See also Gil Shannon, Sergeant, Vice Section, Las Vegas Metropolitan Police Department, testimony before the Nevada Assembly Committee on Judiciary April 4, 2005, at 35 [hereinafter Shannon Testimony].

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Vegas Metro Police arrested 207 prostitutes under the age of eighteen.¹⁴⁰ Child prostitution became a national priority with the FBI focusing on Las Vegas as one of fourteen cities with the most prevalent child prostitution and trafficking.¹⁴¹

Las Vegas Metro Police recognized that the problem was not merely child prostitutes but the adults that orchestrated the trafficking of minors across state lines for the lucrative sex trade in Nevada. Sgt. Gil Shannon of Las Vegas Metro Police's Juvenile Vice Investigation Squad noted that 50 percent of child prostitutes arrested by Las Vegas in 2004 were trafficked from other states.¹⁴² Law enforcement launched local and national initiatives to confront what was becoming a ponderous problem. The FBI launched *Innocence Lost* in June 2003.¹⁴³ The *Innocence Lost*

¹⁴⁰ Lisa Kim Bach, *Trafficking in Children on the Increase*, LAS VEGAS REVIEW JOURNAL, March 19, 2006. Available at http://nl.newsbank.com/Nlsearch/we/Archives?p_action=doc&p_docid=11084AA977A14D70&p_docnum=4&s_dlid=DL0107082918511023911&s_ecproduct=SBKW3&s_subterm=Subscription%20until%3A%2009%2F05%2F2007%20%3A46%20PM&s_docsbal=Docs%20remaining%3A%201&s_subexpires=09%2F05%2F2007%20%3A46%20PM&s_docstart=3&s_docsleft=1&s_docsread=2&s_username=genevaesq&s_accountid=AC0107012917342907514&s_upgradeable=no.

¹⁴¹ Statement of Chris Swecker Assistant Director, Criminal Investigative Division Federal Bureau of Investigation Before the Commission on Security and Cooperation in Europe United States Helsinki Commission June 7, 2005.

¹⁴² Juliet V. Casey, *Human Traffic Targeted*, LAS VEGAS REVIEW JOURNAL, March 16, 2005, available at http://nl.newsbank.com/nlsearch/we/Archives?p_action=doc&p_docid=108E68BA001C1F3C&p_docnum=127&s_orderid=NB0107082918462426497&s_dlid=DL0107082918465626583&s_ecproduct=SBK-W3&s_subterm=Subscription%20until%3A%2009%2F05%2F2007%20%3A46%20PM&s_docsbal=Docs%20remaining%3A%202&s_subexpires=09%2F05%2F2007%20%3A46%20PM&s_docstart=3&s_docsleft=2&s_docsread=1&s_username=genevaesq&s_accountid=AC0107012917342907514&s_upgradeable=no.

¹⁴³ Chris Swecker, Assistant Director, Criminal Investigative Division, FBI, testified before the Commission on Security and Cooperation in Europe, United States Helsinki Commission on June 7, 2005, describing

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Initiative coordinates local and national law enforcement to curb the trafficking of child prostitutes.¹⁴⁴ Las Vegas Metro Police launched Operation STOP (Stop Turning Out child Prostitutes)¹⁴⁵

the large number of children, "According to the 2002 National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children (NISMAART II), 1.6 million children are estimated to run away from home each year, and it is estimated that approximately 40,000 of those children will have some type of involvement in or brush with sexual trafficking. Many of these victims are abandoned or neglected children who are usually not reported as missing to law enforcement or are runaways from their homes or the foster care system".

¹⁴⁴ Robert S. Mueller, III, Director, Federal Bureau of Investigation testified before the House Appropriations Subcommittee on Science, the Departments of State, Justice and Commerce, and Related Agencies September 14, 2006. Director Mueller noted, "The Innocence Lost National Initiative successfully addressed the crime problem of domestic trafficking of children for the purposes of prostitution. To date, this initiative has been expanded to 26 cities with an identified child prostitution crime problem. Eighteen task forces have been established with state and local law enforcement to combat this crime problem, with strong support provided by the National Center for Missing and Exploited Children. There have been 188 investigations (child exploitation or child trafficking cases) initiated, which resulted in 574 arrests, 115 indictments and 101 convictions. Prosecution at the federal level has resulted in the dismantling of 16 criminal organizations engaged in child prostitution."

¹⁴⁵ See International Association of Police Chiefs (IACP), Awards and Campaigns, Policing Awards Finalist 1999. Officers from the Las Vegas Metropolitan Police Vice Section recognized that the traditional methods of addressing the problem were inadequate. We realized that the juvenile prostitutes were victims rather than suspects, and the true suspects were the pimps who turned the juveniles to a life of prostitution, a process call "turning them out." With that in mind, detectives sought a new approach to the investigation and prosecution of these pandering cases and the rehabilitation of the juvenile victims. Las Vegas Metropolitan Vice Section detectives set out to accomplish two goals in every child prostitution case. The first was to locate, arrest, and prosecute any individual responsible for pandering a child. The second was to remove the child victims from a life of prostitution and provide them an avenue to pursue a successful life. This concept required that changes be made in

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which detains child prostitutes and ultimately utilizes the detained child to assist in the prosecution of the pimp.¹⁴⁶ The Las Vegas Metro Vice Section placed 101 child prostitutes in the STOP program and arrested 52 pimps for pandering for minors.¹⁴⁷

B. Material Witness Holds

Operation STOP may be heralded as a means of yielding sufficient evidence to prosecute pimps for pandering, however Las Vegas Review Journal writer Glen Puit noted

if police suspect a prostitute is underage, they incarcerate her at the juvenile detention center and hold her often for weeks on material witness warrants. Many times the girls aren't released until they admit their true identity and age.¹⁴⁸

Operation STOP yielded arrests but the prosecution of pimps remained a legal quandary for Las Vegas Metro and the State of Nevada District Attorneys Association sought legislative help.¹⁴⁹

a variety of areas in the criminal justice system. Police collaborated with several governmental agencies and private groups that would be imperative to the success of the project. This program became known as the S.T.O.P. (Stop Turning Out Child Prostitutes) program.

<http://www.theiacp.org/awards/webber/webberwin99.htm#lvstop>

¹⁴⁶ See Casey, *supra* note 142.

¹⁴⁷ Las Vegas Metropolitan Police Department Organization and Operations Audit, Vice Section Activities Fiscal Year 2002/2003, Matrix Consulting Group, p. 26. The Vice Section had a total of 4107 arrests for fiscal year 2002/2003. *Id.*

¹⁴⁸ See Puit, *supra* note 13.

¹⁴⁹ See Ben Graham of the Nevada District Attorney Association testified before the Nevada Assembly Committee on Judiciary on April 4, 2005 declaring: We're talking about prostitution, and frequently we're talking about young prostitutes. This has nothing to do with putting anybody in custody until they give up any names. In this situation, police officers and victims groups are working with prostitutes, and frequently young prostitutes. They are trying to help them get out of the system and prosecute people that are preying upon them. I'm not talking about clients so much as I am people that are pandering.

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The Nevada legislature passed a law that removed the corroboration requirement for the prosecution of pimps¹⁵⁰. Prior to the legislative amendment, crimes such as prostitution required corroboration before the state could proceed with pandering charges.¹⁵¹ The removal of the corroboration requirement was touted as a critical component in combating the elusive nature of prosecuting pimps.¹⁵² The statutory construction of Nevada's

Pandering is getting someone to go into prostitution, or to continue in prostitution. Frequently, we have situations where the only real testimonies we have are these prostitutes. If you sit and watch, and deal with these prostitutes, many of them are really victims rather than criminals themselves, but the way the current statute is structured, without corroborating evidence they can't even testify against the panderer; the person that is utilizing them to do prostitution. We're seeking the ability to prosecute panderers based upon the testimony of the victim—in this case the prostitute—which is part and parcel of what the panderer is doing. There really is no other crime where this type of evidence, corroboration, is required. From a practical standpoint, who are you going to believe beyond a reasonable doubt, the panderer, who says that they were not getting this person into prostitution, or the prostitute, or victim, really as I see them in many, many cases. They should be able to testify against the people that are preying upon them and getting them to go into, or continue in, prostitution.

¹⁵⁰ Nevada Revised Statute 175.301 Assembly Bill 470 Committee on Judiciary, Date Effective October 1, 2005.

¹⁵¹ Section 1. NRS 175.301 is hereby amended to read as follows:
175.301 Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant must not be convicted upon the testimony of the person upon or with whom the offense has allegedly been committed, unless:

1. The testimony of that person is corroborated by other evidence; or

2. The person giving the testimony is, and was at the time the crime is alleged to have taken place, a police officer or deputy sheriff who was performing his duties as such.

¹⁵² See also Shannon Testimony *supra* note 14. Shannon expresses frustration not having sufficient evidence to prosecute under the constraints requiring corroboration: There were 72 juvenile prostitutes arrested in Clark County in 2000. Last year we had 207 juvenile

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pandering statutes now places the onus on the prostituted person to come forth and give testimony.¹⁵³ The revised statute reduced the

prostitutes from the ages of 11 to 17. This year our numbers are continuing to set records, and we are already at 54 juvenile prostitutes. By removing that requirement, it will allow us to have an easier arrest and prosecution of the offenders, as opposed to the current status. Currently, if a juvenile is arrested for prostitution and identifies a pimp—case scenario being that, “He’s been beating me, torturing me to work as a prostitute.”—we have to rely on her word only if there was no one present during that torture and beating. If there is a requirement of corroboration, her statement and testimony is not enough for us to move forward.

¹⁵³ NRS 201.300 Pandering: Definition; penalties; exception.

1. A person who:

(a) Induces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution;

(b) By threats, violence or by any device or scheme, causes, induces, persuades, encourages, takes, places, harbors, inveigles or entices a person to become an inmate of a house of prostitution or assignation place, or any place where prostitution is practiced, encouraged or allowed;

(c) By threats, violence, or by any device or scheme, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution;

(d) By promises, threats, violence, or by any device or scheme, by fraud or artifice, by duress of person or goods, or abuse of any position of confidence or authority or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person of previous chaste character to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of sexual intercourse;

(e) Takes or detains a person with the intent to compel the person by force, threats, menace or duress to marry him or any other person; or

(f) Receives, gives or agrees to receive or give any money or thing of value for procuring or attempting to procure a person to become a prostitute or to come into this state or leave this state for the purpose of prostitution,
is guilty of pandering.

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complexity of prosecuting pimps but the statute made the prostituted person the solitary component in prosecuting pimps in Nevada.

The testimony of the prostituted person has become all the more critical to the prosecutor's case. Young women are routinely placed in detention on material witness holds with the expectation that they will cooperate with law enforcement and give testimony against their pimps.¹⁵⁴ The harsh treatment of witnesses by the Las Vegas juvenile justice system and the expectation of cooperation in return are draconian in its approach.

The juvenile justice system in Las Vegas recognizes that detaining young women for the purposes of cooperation is

2. A person who is found guilty of pandering:

(a) An adult:

(1) If physical force or the immediate threat of physical force is used upon the adult, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(2) If no physical force or immediate threat of physical force is used upon the adult, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) A child:

(1) If physical force or the immediate threat of physical force is used upon the child, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and may be further punished by a fine of not more than \$20,000.

(2) If no physical force or immediate threat of physical force is used upon the child, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000.

3. This section does not apply to the customer of a prostitute.

¹⁵⁴ See *infra* notes 158-164.

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problematic. Judge William Voy¹⁵⁵ identified the vulnerability of the juvenile prostitutes:

They feel that there is something wrong with *them* and that they are not getting it from the environment they are in whether it is a foster care placement, its living with their grandmother or living with their parents. The majority of the kids are either living in broken homes and/or foster care placements¹⁵⁶

Judge Voy recognized that there needs to be a different option than detaining young women although he also noted the importance of garnering their testimony: We need an alternative to the detention center . . . [but] we have responsibilities to keep the girls here to testify against pimps.¹⁵⁷

The Las Vegas juvenile system has few if any other alternatives for young women who are detained for prostitution. The KNPR host Dan Berns posed the question to the Las Vegas juvenile district attorney Teresa Lowry¹⁵⁸:

DB: If we are talking about hundreds of girls out there on the streets at any given time, give or take, do we have the facilities bottom line, Teresa Lowry, to bring those girls in for treatment and get them back to their families?

TL: Right now? No.¹⁵⁹

¹⁵⁵ Honorable William O. Voy, Clark County District Court Eighth Judicial Family Division

¹⁵⁶ Transcript of State of Nevada, KNPR Radio 88.9, Dave Berns Host January 29, 2007, "Teen Prostitution" guest Judge William Voy [hereinafter KNPR Voy Interview].

¹⁵⁷ *Id.* at 11.

¹⁵⁸ Chief Deputy District Attorney, Juvenile Services, Clark County, Nevada.

¹⁵⁹ Transcript of State of Nevada, KNPR Radio 88.9, Dave Berns Host January 29, 2007, "Teen Prostitution II" guest Teresa Lowry.

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The criminal defense bar expressed concern.

Susan Roske¹⁶⁰ explained the dichotomous position of the juvenile justice system:

Law enforcement can identify the girls, they can go after the pimps but the juvenile justice system then has the girl and I think we all agree that bringing a girl who is the victim of an adult sexual exploiter into a detention facility is *not* how we want to operate. That girl needs to be in a secure house, because, as we know, if she is not in a secure house she will run, and if she runs she puts herself at risk.¹⁶¹

All parties involved acknowledge that detention for exploited young women is a problem. No alternatives exist for juvenile prostitutes in Las Vegas due to the lack of interest in funding a safe house or having programs geared toward the vulnerable young women.¹⁶²

¹⁶⁰ Chief Deputy Public Defender, Juvenile Public Defender's Office, Clark County, Nevada.

¹⁶¹ Transcript of State of Nevada, KNPR Radio 88.9, Dave Berns Host January 29, 2007, "Teen Prostitution II" guest Susan Roske.

¹⁶² See KNPR Voy Interview, *supra* note 156 at 10-11.

WV: We have the girls' program in WestCare, but, unfortunately if not, and these girls have other issues it is too easy to run from that program and that's a problem. So what we did early on in this program ... what we've been doing is hit and miss. We are learning as they go because there is no book that you can read on how to deal with these kids and what the right answers are because sometimes it's trial and error. Early on we put this thing together with the public defender and the DA came to me and said "we need to treat them together like victims. We want to do what's right for them." And I said, "Okay, let's do it. But we need an alternative to the detention center for some of these girls while we are trying to figure out what to do with them. It takes weeks of trying to work with them to figure out what is the best answer." In addition we have responsibilities to keep the girls here to testify against the pimps

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Once a determination is made to detain girls as material witnesses, Nevada laws do not give a clear indication of restrictions on the detention process.¹⁶³ Under the Nevada juvenile

and sometimes that takes a while. In the process of figuring out what to do with them is not something that can happen overnight. What we did is that we decided that we would put together a safe house where we could have these girls in a secure location but not a detention center and not a location like WestCare where you could walk from very easily. We found a location for, where kind of isolated, we could have staff there

DB: You want that to be a secret location?

WV: Semi secret, yeah, exactly and a location that if they decide to walk out the door, our staff could grab them and bring them back and we could resolve it.

DB: What are you doing at the safe house? Is this counseling, a place to live, transitioning them out?

WV: Exactly—an assessment center, transition center, whatever you want to call it where we have a place where we can take them some time without the push to get them out of the detention center.

DB: And who is paying for this?

WV: Well that was the whole issue. We asked the county to pay for it and the way we conditioned the program for the transitional center and we figured out what was the right thing to do for the girl, then they would go to wherever the next location would be whether it is Children of the Night program, or Caliente or back home or whatever. We had this all set up but it was all based upon a certain number. We needed a ten bed guaranteed ten kids at any given time in the center for the funding to work. When we ran our numbers we couldn't guarantee it and so

DB: The numbers?

WV: The financial numbers. We couldn't guarantee that number.

¹⁶³ See N.R.S. 178.494. Bail for witnesses; judicial review of detention or amount of bail

1. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the magistrate may require him to give bail for his appearance as a witness, in an amount fixed by the magistrate. If the person fails to give bail the magistrate may:

(a) Commit him to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed;

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code, juvenile cases are civil not criminal in nature and therefore, juveniles are not entitled to bail.¹⁶⁴ The juvenile judge becomes the sole arbiter of if and when a detained witness can be released. The juvenile judge can detain a young girl without a charge or release her to the proper authorities.¹⁶⁵ After the initial detention hearing, judicial discretion determines the detention framework.¹⁶⁶ The law does require periodic reviews but the statute stands silent as to an actual timeframe.¹⁶⁷ The judge may order release after the court determines the detainee was held an unreasonable length of time.¹⁶⁸ The statute gives no definition as to what an unreasonable length of time would be.¹⁶⁹

Analogous to federal material witness law, the rights of the detainee under Nevada law are limited and ambiguous. Judges have the discretion to determine the criteria for detention and whether detention meets an unreasonable standard. Nevada laws do not give material witness detainees a right to counsel as federal material witness law does. The juvenile is not entitled to a regular detention hearing as prescribed by law. Once a juvenile is detained

(b) Order his release if he has been detained for an unreasonable length of time; and

(c) Modify at any time the requirement as to bail.

2. Every person detained as a material witness must be brought before a judge or magistrate within 72 hours after the beginning of his detention.

The judge or magistrate shall make a determination whether:

(a) The amount of bail required to be given by the material witness should be modified; and

(b) The detention of the material witness should continue.

The judge or magistrate shall set a schedule for the periodic review of whether the amount of bail required should be modified and whether detention should continue.

¹⁶⁴ *Id.* See also N.R.S. 62D.010 Manner for conducting proceedings;

(1) Each proceeding conducted pursuant to the provisions of this title:

(a) Is not criminal in nature.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

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as a material witness, the juvenile subsists in a legal limbo. The only remedy a material witness may seek is release. The Nevada courts have not recognized or granted material witnesses relief.

A material witness detained by the state for an inordinate amount of time sued government officials. In *Houston v. Humboldt County*,¹⁷⁰ the trial court detained in custody a material witness to a first degree murder for one year.¹⁷¹ The plaintiff sued state and county officials for illegal detention.¹⁷² The U.S. District court dismissed the suit citing a lack of proximate cause between state action and the plaintiff's detention, and the court also maintained the prosecutor had prosecutorial immunity.¹⁷³

The only relief a Nevada court can grant is eventual release. The juveniles have no recourse but to cooperate with law enforcement and testify against their pimps. After the case is prosecuted, the juveniles are returned to their respective jurisdictions without services.¹⁷⁴ The Las Vegas community's

¹⁷⁰ 561 F. Supp 1124 (1983).

¹⁷¹ *Id.* at 1128.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See KNPR Voy Interview, *supra* note 157, at 5-6.

DB: This is the image that I think a lot of us have from decades ago that a young kid that is lost and looking for money goes to a city looking for something and they end up selling their bodies. Is this what you are talking about?

WV: We get some girls like that too. The ones that aren't brought here by a pimp, they are attracted for other reasons and they get here and they end up getting involved in the game. A lot of times they will get picked up by a pimp here—they never came here *intending* to do it but they are now desperate and the pimp is there and you see that combination.

Rarely do you see the lone girl ... well, I actually do see some girls that got here for another reason and needed a way to get home and this is the only way they can do it. They easily get picked up by vice because they have no idea what they are doing, quite frankly. We get some of those and those are the real good ones because we can get them in, realize they are not really in the game—we don't have to do de-programming, do all that stuff—we can get them back to their home jurisdictions. The problem with sending a lot of these girls back is that the home

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refusal to place resources at the disposal of the juvenile justice system leaves juveniles in a quagmire. The juveniles have assisted in the prosecution of their pimps, the criminal justice system has incarcerated them for the duration of the pimp's case and they are released into the same circumstances that led to their downfall. The juveniles are in a constant state of being victimized.

C. Secondary Victimization

The Las Vegas Metro Police's Operation STOP's use of material witness holds to coerce testimony from child prostitutes can only yield more psychological devastation. The trauma of working in the Las Vegas sex trade is degrading and dehumanizing but for a child the effects are exponentially worse.¹⁷⁵ Nevada laws give no recourse for juveniles who are detained but to cooperate with law enforcement and eventually be released. Las Vegas Metro Police must identify and address the layers of anguish juveniles suffer. Firstly, many young women who become prostitutes were physically and sexually abused.¹⁷⁶ Secondly,

jurisdictions don't understand and appreciate the severity of what we are dealing with here. We get kids, especially those that are repeaters, you know—they came here once before, we arrested them, we went through the court process, we sent them back to their jurisdiction, and then they come back again. Then we find out that the other jurisdiction, when they got the kid back, the kid is a child welfare kid in foster placement – and all they do is place the kid back in the same foster placement that they ran from with no additional services, no counseling, no nothing to address the issues that caused them to be in the situations they were in and guess what? They come back – go figure!

¹⁷⁵ See Micloe Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69 (1998) [hereinafter Bingham].

¹⁷⁶ See John J. Potterat *et al.*, *Pathways to Prostitution: The Chronology of Sex and Drug Abuse Milestones*, 35 JOURNAL OF SEX RESEARCH 333 (1998) This cross-sectional study of 237 prostitute women and 407 comparisons suggests a complex link between illicit drug use and subsequent entry into prostitution in Colorado Springs. Such links have been explored in prior studies. Statistics show that 66% of prostitutes had used drugs before entering into prostitution, 18% began both behaviors at the same time, and 17% used drugs after beginning to work as a

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being juvenile sex workers in the dangerous and adult entertainment focused city of Las Vegas can be overwhelming.¹⁷⁷ Lastly, the arrest and detention of juveniles in general can have a negative effect on personality and self esteem. Asking such a vulnerable population to cooperate and testify against pimps and sex traffickers is unfathomable. The juveniles detained by Operation STOP are prime candidates for secondary victimization¹⁷⁸.

Secondary victimization can manifest itself depending on how the victim perceives criminal proceedings.¹⁷⁹ Secondary victimization has been defined as negative social or societal reaction in consequence of the primary victimization and is experienced as further violation of legitimate rights or entitlements by the victim.¹⁸⁰ If victims perceive the outcome of the criminal proceeding the defendant not receiving a severe enough sentence, the victim may be fearful of the defendant's release.¹⁸¹ A juvenile testifying against her pimp may have unreasonable expectations of the case outcome. Plea bargaining could immediately place a juvenile detainee/witness in peril whether it is a realistic or perceived danger.

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prostitute.; see also Magnus Seng, *Child Sexual Abuse and Adolescent Prostitution: A Comparative Analysis*, 24 ADOLESCENCE 665, 671-672 (1989) [hereinafter Seng]. The typical child prostitute Seng studied was 14 years old females some were young as 12 years old. Children involved in prostitution have a history of running away. Seng's study showed an average participant had runaway 11 times. Seng detailed the average study participant to be a 14 year old depressed Caucasian female with low self-esteem and suicidal ideation.

¹⁷⁷ See Bingham, *supra* note 176, quoting Mimi Silbert & Ayala Pines, *Occupational Hazards of Street Prostitutes*, 8 CRIM. JUST. & BEHAV. 387 (1981); Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 L. & INEQ. 609, 618 (1984).

¹⁷⁸ See Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 SOCIAL JUSTICE RESEARCH 313, 314 [hereinafter Orth].

¹⁷⁹ See Orth *supra* note 179 at 315.

¹⁸⁰ *Id.* at 314.

¹⁸¹ *Id.*

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Recognition of victim status is critical for crime victims.¹⁸² The victim needs the public recognition of the defendant as the perpetrator and the victim as the publicly recognized as victim of a criminal offense.¹⁸³ Violation of the victim's need for public recognition as the victim can produce a particularly severe form of secondary victimization.¹⁸⁴ Juveniles who are detained under the guise of Operation STOP will never receive full public recognition as a victim. The purpose of detaining juveniles for cooperation is that they would otherwise flee or not cooperate with law enforcement. They are perceived by law enforcement and the courts as participants in their own victimization.¹⁸⁵

A system that seeks to punish the perpetrators of juveniles working as prostitutes needs to address the sensitive issues surrounding the detainee/witness. The juvenile detainees are most likely to be fourteen year old runaways with a history of drug and alcohol abuse.¹⁸⁶ The conditions that lead juveniles to the streets can never be underestimated. Operation STOP needs to protect the juveniles they seek in their zeal to prosecute pimps. While legal and psychological counseling would stymie the effects of secondary victimization¹⁸⁷, a sophisticated and reasoned approach that balances the need to prosecute pimps and sex traffickers with the needs of prostitution is needed. Juveniles should not be victimized by the criminal justice system that seeks their cooperation. International human rights laws have delineated prostitution and trafficking victims from the paradigm that they are an exploited and vulnerable class that need protection and services.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See KNPR Voy Interview, *supra* note 157, at 11. There is no easy answer. Some of these girls are finally ready to give it up and we are able to send them to the Children of the Night Program in California. Some of them their maturity level is so low or they may not be able to give it up and keep running from us that we have to send them to Caliente.

¹⁸⁶ See Seng *supra* note 177 at 671.

¹⁸⁷ See Orth *supra* note 179 at 324.

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The United Nations drafted resolutions that law enforcement agencies like Las Vegas Metro can adopt or model.

A. United Nation Protocols for Trafficked and Exploited Children

An international body of laws, resolutions and treaties exists that can address the detention of child prostitutes. Child sex workers are treated as exploited parties and not criminals as in the Las Vegas Juvenile Justice system. Several resolutions address the basic rights of detained persons, exploited persons and trafficked persons. The United Nations has a sixty year history of being the international body that drafts treaties and resolutions that address fundamental human rights and abuses.

The United Nations has grappled with the transnational problem of trafficked women and children involved in sweat shops and the sex trade. The UN initially crafted the basic human rights for all persons in 1948.¹⁸⁸ The Universal Declaration of Human Rights affirmed that no one should be held in servitude or slavery and also proclaimed no one should be subject to arbitrary arrests or detention.¹⁸⁹ Las Vegas Metro Police arbitrarily detain young women seeking cooperation and give little to no assistance in return. The Las Vegas Metro Police methodology of detaining of young women leads to abuses in the system. Juveniles do not have the same due process rights as criminal defendants.¹⁹⁰ The judicial reason to continue detention of the child prostitutes may aid the state in prosecuting pimps; nevertheless the detention is a fundamental violation of the UDHR. As the UN developed as an international governing body, more nuanced conventions and proclamations specifically addressing trafficked woman and

¹⁸⁸ Universal Declaration of Human Rights, G.A. Resolution 217A, at 71, UN.GOAR, 3rd Sess., 1st plen. Mtg. U.N. Doc A/810 (December 12, 1948) [hereinafter UNDH] There are no signatories to the UDHR. The Declaration was ratified through a proclamation by the General Assembly on December 10, 1948 with a count of 48 votes to none with only 8 abstentions, available at <http://www.unac.org/rights/question.html>.

¹⁸⁹ *Id.* at Articles 4 and 9.

¹⁹⁰ See Cecilia Espenosa, *Good Kids, Bad Kids: A Revelation About the Due Process Rights of Kids*, 23 HASTINGS CONST. L.Q. 402 (1996).

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children emerged. The detention of child prostitutes violates numerous UN resolutions.

Over a succession of several years, the UN created the foundation for international standards of human rights. The UN began with the broad aspects of fundamental rights of self determination and the pursuit of economic, cultural and social development.¹⁹¹ If a person's rights are violated, the resolution gives the grieved party the right to have an effective remedy to be determined by competent judiciary.¹⁹² A child prostitute that is detained under Las Vegas Metro Police Operation STOP has no judicial remedy once detained. The judge whom determines the initial detention also reviews the decision in subsequent hearings.¹⁹³ The International Covenant on Civil and Political Rights elucidated rights in areas that they did not contemplate the adoption of the Covenant. The State Parties are forbidden from restricting fundamental human rights even if the Covenant does not the right.¹⁹⁴ The Covenant restricts the abridging of rights of detained child prostitutes.

The UN passed a resolution in 1979 recognizing the challenges and discrimination women faced.¹⁹⁵ The Convention

¹⁹¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) U.N. Doc A/Res/21/2200A (December 16, 1966). The United States ratified the Protocol on May 10, 1977, available at <http://www.unhchr.ch/tbs/doc.nsf/22b020de61f10ba0c1256a2a0027ba1e/80256404004ff315c125638b005f309e?OpenDocument>.

¹⁹² Article 2§3(b)

¹⁹³ See N.R.S. 178.494. Bail for witnesses; judicial review of detention or amount of bail, *supra* note 117.

¹⁹⁴ Article 5(2)

¹⁹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180 U.N. Doc A/Res/34/180 (December 18, 1979) [hereinafter CEDAW]. The United States accepted the Convention with a Signature only designation. The Signature only designation is defined by the UN Treaty Reference guide as: Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to

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on the Elimination of All Form of Discrimination against Women (CEDAW) identified discrimination that impaired women from partaking equally in political, social, economic and cultural life of their countries.¹⁹⁶ The convention sought to not only condemn all forms of gender discrimination; it sought legal protections for women.¹⁹⁷ The legal protections included an outright ban on trafficking in women and exploitation of prostitution of women.¹⁹⁸ CEDAW protects vulnerable and exploited women worldwide. The Las Vegas criminal justice system, exploits child prostitutes by utilizing Operation STOP. Las Vegas Metro detains girls for the criminal act of prostitution but the police expect the girls to cooperate in the prosecution of their pimps. The criminal justice system exploits vulnerable young women whom it is legally meant to protect. Similar to trafficked immigrant women who are asked to cooperate in exchange for T-visas, the child prostitutes are expected to risk their lives and cooperate with law enforcement. Many of the young women are sent home without services or assistance. The exploitation of young woman albeit by sex traffickers, pimps or law enforcement is what the drafters of CEDAW sought legal redress against.

The rise in international trafficking of children for child prostitution and child pornography lead to the UN resolution the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹⁹⁹

continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. CEDAW treaty. *See* UN High Commissioner for Human Rights Status of Ratifications, available at <http://www.unhchr.ch/tbs/doc.nsf/22b020de61f10ba0c1256a2a0027ba1e/80256404004ff315c125638b005f0293?OpenDocument>. *See also* UN Treaty Collection Treaty Reference Guide, available at <http://untreaty.un.org/English/guide.asp#signaturead>.

¹⁹⁶ *Id.* at Article 1.

¹⁹⁷ *Id.* at Article 15 (1)-(4).

¹⁹⁸ *Id.* at Article 6.

¹⁹⁹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res.

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The Protocol requires State Parties to forbid the sale of children, child prostitution and child pornography and make such activities illegal.²⁰⁰ The Protocol also requires State Parties to adopt measures that protect the rights and interests of child victims.²⁰¹

54/263 U.N. Doc A/Res/54/263 (May 25, 2000) The United States ratified the Protocol on May 25, 2000, available at <http://www.unhchr.ch/tbs/doc.nsf/22b020de61f10ba0c1256a2a0027ba1e/a5e87d2e7aac99e1c1256997002c2a4a?OpenDocument>. [hereinafter Right of the Child] .

²⁰⁰ *Id.* at Articles 1 and 3

²⁰¹ *Id.* at Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

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The requirement that State Parties recognize the vulnerability of child victims even as witnesses displays how far afield Operation STOP maneuvers. The UN recognized, as Las Vegas Metro Police has, that problems of child prostitution and child trafficking are grave. The approaches of the Las Vegas Metro Police Department and the UN to the problems of child prostitution and child trafficking of could not be more divergent. Article eight of the Protocol requires a measured and thoughtful approach in dealing with child witnesses and victims. The best interest of the child is the primary consideration.²⁰² Services, compensation and family considerations are also required of State Parties. Operation STOP treats child witnesses who are detained as disposable in comparison. Judge William Voy expressed frustration at the unfathomable approach to child prostitutes whom the states seeks cooperation in prosecutions.²⁰³ Las Vegas Metro Police violated the letter and spirit of the Protocol that is meant to protect an exploited and vulnerable class of child prostitutes.

Attacking the criminal aspects of trafficking, the UN passed the Convention against Transnational Organized Crime which included an annex for suppressing the trafficking of women and

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

²⁰² *Id.*

²⁰³ See KNPR Judge Voy, *supra* note 157 at 10-11.

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children.²⁰⁴ The Protocol requires State Parties to protect the privacy and identity of victims by making the legal proceedings confidential in nature.²⁰⁵ The Protocol also requires State Parties provide assistance in the physical, psychological and social recovery of trafficking victims.²⁰⁶ State Parties are also required to

²⁰⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25 U.N. Doc A/Res/55/25 (November 15, 2000) The United States ratified the Protocol on November 3, 2005, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty13.asp>.

²⁰⁵ *Id.* at Article 6

²⁰⁶ Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

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consider repatriating trafficking victims or assisting in returning them to their homes of permanent residence.²⁰⁷ Detained child prostitutes in Las Vegas are required to give police statements and potentially identify the pimp or trafficker in court. The child prostitute as witness is not protected from the abuses of the criminal justice system. The zealous approach to prosecuting pimps and traffickers can leave child prostitutes without the assistance when prosecutions are completed. Las Vegas Metro Police and the Juvenile Court system must approach the child prostitution problem with the nuances of the Protocol drafters. Sending children home or placing them in safe houses is a short term solution that does not address the root causes of child prostitution.

CONCLUSION

A multifaceted approach is needed in seeking solutions to the pervasive problem of child prostitution. Prosecuting pimps and sex traffickers is an important component in a crime that has national and international ramifications. Nevertheless, the detention of child prostitutes for the sake of prosecutions is not the solution. The following proposals seek to balance the need for holding sex traffickers and pimps accountable with protection and assistance for prostituted children: 1) states such as Nevada that aggressively prosecute sex traffickers and pimps must adopt the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; 2) grant children detained on material witness warrants the right to counsel; and 3) allow a civil cause of action for prostituted women and children against sex traffickers and pimps.

The Las Vegas Metro Vice Division must adopt UN model standards when seeking cooperation from child prostitutes. The

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

²⁰⁷ *Id.* at Articles 7 and 8.

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Las Vegas Metro needs to observe the international standards set forth by the United Nations and recognize a new paradigm that young girls are not just witnesses to be used for the prosecution of pimps but they are victims themselves. Prosecuting pimps must include parameters for the protection prostitutes. The Nevada legislature should draft legislation that recognizes that prostitution is not a victimless crime. In the zeal to eradicate child prostitution in Las Vegas, the criminal justice system must not trample upon the lives vulnerable and exploited girls. The Nevada legislature should adopt Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

Nevada grants juveniles the right to counsel during delinquency proceedings.²⁰⁸ The right to counsel should be extended for civil actions such as material witness holds. Due process rights can be easily ignored when the child prostitute does not have an advocate in court. Children in the juvenile or adult criminal system are not always fully apprised of their rights.²⁰⁹ Children may also too easily waive the critical constitutional right of counsel.²¹⁰ To ensure that child witnesses do not languish in detention awaiting the outcome of an adult prosecution, an advocate is needed for the child.²¹¹

²⁰⁸ See NRS 62D.030 Advisement of right to representation by attorney; appointment of attorney; waiver of right to representation; responsibility of parent or guardian for payment; compensation
1. If a child is alleged to be delinquent or in need of supervision, the juvenile court shall advise the child and the parent or guardian of the child that the child is entitled to be represented by an attorney at all stages of the proceedings.

²⁰⁹ See Barry Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. CRIM. L. & CRIMINOLOGY 1185(1989).

²¹⁰ See Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577(2002).

²¹¹ *Contra* Kristin Henning, *Loyalty, Paternalism and Rights: Client Counseling Theory and the Role of the Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245 (2005). Henning challenges the traditional model of juvenile representation of best interest or client

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States that recognize the victimization of prostitutes have drafted novel legislation that allows the prostituted person to claim a civil cause of action against johns, pimps, panderers, solicitors, and recruiters.²¹² Illinois has taken the lead with the Predator Accountability Act.²¹³ The Act specifically addresses juveniles as

centered. Best interest representation was found to be particularly disturbing. As revealed in a number of the state assessments on the access to and quality of juvenile counsel, attorneys who adhere to the best-interest model often give very little attention to challenging the government's case, conduct little or no investigation, and frequently rely on probation officers as the primary source of information about the client and the charges. An attorney who believes that juvenile court intervention is best for the child may refuse to fight or be lackadaisical in fighting allegations of delinquency--even if he or she knows the client is innocent. *Id.* at 288-289.

²¹² See Shay-Ann Heiser Singh, *The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice* 56 DEPAUL L. REV. 1035 (2007).

²¹³ 740 ILCS 128/5 Predator Accountability Act

§ 5. Purpose. The purpose of this Act is to allow persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.

§ 10. Definitions. As used in this Act:

"Sex trade" means any act, which if proven beyond a reasonable doubt could support a conviction for a violation or attempted violation of any of the following Sections of the Criminal Code of 1961: 11-15 (soliciting for a prostitute); 11-15.1 (soliciting for a juvenile prostitute); 11-16 (pandering); 11-17 (keeping a place of prostitution); 11-17.1 (keeping a place of juvenile prostitution); 11-19 (pimping); 11-19.1 (juvenile pimping and aggravated juvenile pimping); 11-19.2 (exploitation of a child); 11-20 (obscenity); or 11-20.1 (child pornography); or Article 10A of the Criminal Code of 1961 (trafficking of persons and involuntary servitude).

"Sex trade" activity may involve adults and youth of all genders and sexual orientations.

"Victim of the sex trade" means, for the following sex trade acts, the person or persons indicated:

1) soliciting for a prostitute: the prostitute who is the object of the solicitation;

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being victims of prostitution.²¹⁴ The juveniles may file actions against their pimps and be granted compensation for the violence, humiliation and exploitation they suffered.²¹⁵ The tort action is an

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- (2) soliciting for a juvenile prostitute: the juvenile prostitute, or severely or profoundly mentally retarded person, who is the object of the solicitation;
 - (3) pandering: the person intended or compelled to act as a prostitute;
 - (4) keeping a place of prostitution: any person intended or compelled to act as a prostitute, while present at the place, during the time period in question;
 - (5) keeping a place of juvenile prostitution: any juvenile intended or compelled to act as a prostitute, while present at the place, during the time period in question;
 - (6) pimping: the prostitute from whom anything of value is received;
 - (7) juvenile pimping and aggravated juvenile pimping: the juvenile, or severely or profoundly mentally retarded person, from whom anything of value is received for that person's act of prostitution;
 - (8) exploitation of a child: the juvenile, or severely or profoundly mentally retarded person, intended or compelled to act as a prostitute or from whom anything of value is received for that person's act of prostitution;
 - (9) obscenity: any person who appears in or is described or depicted in the offending conduct or material;
 - (10) child pornography: any child, or severely or profoundly mentally retarded person, who appears in or is described or depicted in the offending conduct or material; or
 - (11) trafficking of persons or involuntary servitude: a "trafficking victim" as defined in Section 10A-5 of the Criminal Code of 1961.

²¹⁴ *Id.* at § 2,5,7,8 and 10.

²¹⁵ *Id.* at § 20. Relief.

- (a) A prevailing victim of the sex trade shall be entitled to all relief that would make him or her whole. This includes, but is not limited to:
 - (1) declaratory relief;
 - (2) injunctive relief;
 - (3) recovery of costs and attorney fees including, but not limited to, costs for expert testimony and witness fees;
 - (4) compensatory damages including, but not limited to:
 - (A) economic loss, including damage, destruction, or loss of use of personal property, and loss of past or future earning capacity; and

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attempt to vindicate the victim and result in substantial monetary recovery to publicize and combat prostituting of children.²¹⁶ The tort claim complements Article 6 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. A successful claim would give much needed recognition to an exploited and overlooked group and give greater accountability to panderers in the child sex trade.

Any state that seeks to utilize children in their prosecution of adults in sex trafficking and prostitution should be able to guarantee child witnesses basic due process rights and legal and social service assistance. The Las Vegas Metro Police Department and the Juvenile Court does not offer basic assistance to their child witnesses and by not doing so they violate the basic human rights of child prostitutes.

(B) damages for death, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, burial expenses, pain and suffering, and physical impairment;

(5) punitive damages; and

(6) damages in the amount of the gross revenues received by the defendant from, or related to, the sex trade activities of the plaintiff.

²¹⁶ See Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARVARD L. REV. 2574 (2006).